161 US 639

TRANSCRIPT OF RECORD.

161-639

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 652.

CAROLINE SOUTHWORTH, EXECUTRIX OF JOHN P. SOUTHWORTH, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 2, 1895.

(15,942.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 29, 1895.

1 In the Court of Claims.

JOHN P. SOUTHWORTH
vs.
THE UNITED STATES. } 11977.

I.—*Petition. Filed December* 16, 1878.

The petition of John P. Southworth, a citizen of the United States, residing at New Orleans, in the State of Louisiana, respectfully showeth :

That in and during the year 1876 he was circuit court commissioner for the district of Louisiana, duly appointed and acting as such.

That during the time aforesaid complaints were duly made to your petitioner, as such circuit court commissioner for said district of Louisiana, as required by law, against certain persons therein named, charging them with having violated section 5512 of chap. 7 of Title Crimes of the Revised Statutes of the United States, which provides for the punishment of fraudulent registration of voters, &c.; said offence being by said section made a crime, and punishable, as provided in section 5511 of said chapter, by "a fine of not more than five hundred dollars, or by imprisonment of not more than three years, or by both."

That on such complaint being made as aforesaid, your petitioner, as such commissioner, duly issued warrants against the persons named in said complaints and therein charged with said offenses, which said warrants were, in all respects, in due form of law, and were duly issued by your petitioner as such commissioner, and by him delivered to the marshal of said district.

That the number of complaints made to your petitioner as such commissioner, and the number of persons therein complained of, and the number of warrants issued as aforesaid on said complaints against said persons therein named, were eight thousand two hundred and eighty-three.

That the complaints in each of the above cases were in the form as set forth in Exhibit A, hereto annexed; and the warrants issued thereon were in the form as appears by Exhibit B, hereto annexed; which said exhibits are made a part of this petition.

Your petitioner further shows, that each of said warrants were duly returned by the said marshal or his deputies, with their doings indorsed thereon; that thirteen hundred and eighty of the persons named in said war-ants were duly arrested; seventy-seven were examined and held for trial; six thousand nine hundred and three were not found; and thirteen hundred and three were examined and discharged.

That in each of said cases a docket entry was kept by your petitioner, as such commissioner aforesaid, of all proceedings had therein, as required by law, which said docket contained an entry in each

case of the title of the case, viz., The United States *v.* each de-
2 fendant, naming him; the drawing of the affidavit or complaint and the date of the same; the issuing the warrant and its date; the return of the officer; the arrest and examination of the person charged in each case where arrest was made; the number of oaths administered and affidavits filed; the hearing on examinations, and all proceedings, including all services incident to the arrest and examination.

Your petitioner further says that, as such commissioner, he kept full and correct files in each case of all papers therein, including affidavits, warrants, and all papers incident to the arrest and examination of the person or persons charged with said offense.

Your petitioner further shows, that on the — day of April, 1877, he forwarded his account for such service, duly verified by his oath, to the district attorney of the said district of Louisiana, as required by law, who thereupon submitted the same in open court for the said district of Louisiana, and the said court did pass upon the same, by approving the said account to the amount of the fees charged for services in all cases wherein the persons arrested had been held for trial, and by disapproving and disallowing and refusing to certify the same, as required by law, in all the other cases.

Your petitioner further shows, that thereafter and on the — day of ——, 1877, he duly caused to be presented to the proper accounting officer of the Treasury Department of the United States his said account for settlement, and that such accounting officer refused, and still refuses, to allow said account, or to pay the same, as will more fully appear in the correspondence received from said Treasury Department, a copy of which is hereto attached, marked Exhibit D, and made a part of this petition.

Your petitioner further shows, that no assignment or transfer of said claim, or any part thereof, has been made by him; and that he is the lawful owner thereof, and entitled to have and recover from the said United States the full amount thereof, to wit, the sum of ten dollars, for his fees for his services in each of said cases above described, after allowing all setoffs, amounting in the aggregate to the sum of eighty-two thousand eight hundred and thirty dollars, as provided by section 1986 of the Revised Statutes of the United States.

Your petitioner further shows, that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in said petition are true.

Wherefore your petitioner prays judgment for the said sum of eighty-two thousand eight hundred and thirty dollars, together with costs.

JOHN P. SOUTHWORTH.

UNITED STATES OF AMERICA.

DISTRICT OF LOUISIANA, } ss:
Parish of Orleans, }

John P. Southworth, being duly sworn, doth depose and say that he is the petitioner named in the foregoing petition; that he has read the same, and knows the contents thereof, and that the same is true, of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

JOHN P. SOUTHWORTH.

Sworn and subscribed before me this 28th day of June, 1878.

F. A. WOOLFLEY, [SEAL.]
Comm'r U. S. Circuit Court, District of Louisiana.

John W. Bell and Carpenter & Coleman, petitioner's counsel, Washington, D. C.
The claimant's post-office address is New Orleans, Louisiana.

3 EXHIBIT A.

UNITED STATES OF AMERICA, }
District of Louisiana, Parish of Orleans. }

—— ——, —— ——, having been duly sworn, each for himself on oath says, that he is a citizen of the State of Louisiana, residing in and a qualified elector of said parish of Orleans, duly registered, and that his name appears as a registered elector or voter upon the registration books of said parish for the year 1876; and they further say, each for himself, that they have made due and diligent personal inquiry for —— ——, registered upon the registration books of the — ward of the city of New Orleans, No. —, and claiming to reside at No. — —— street in said ward and city; and that said —— —— does not reside in said — ward or parish of Orleans aforesaid; that therefore said —— ——, on or about the — day of ——, 187–, did fraudulently obtain registration as aforesaid in said — ward and parish as stated, as an elector in said ward and parish, contrary to the 21st section of act No. 155 of the session of 1874, of the General Assembly of the State of Louisiana, and contrary to and in contravention of section 5512 of the Revised Statutes of the United States.

—— ——.
—— ——.

Sworn to and subscribed on the — day of ——, 1876.

JNO. P. SOUTHWORTH,
[L. S.] *United States Commissioner of the Circuit Court in and for the District of Louisiana.*

EXHIBIT B.

UNITED STATES OF AMERICA,
District of Louisiana.

THE UNITED STATES
vs.
—— ——.

The President of the United States of America to the marshal of the district of Louisiana or either of his lawful deputies, Greeting:

You are hereby commanded to arrest and bring before me the body of —— ——, at my court-room, in the city of New Orleans, then and there to answer to a charge on affidavit on oath made against the said —— —— by —— —— and —— ——, registered electors of said parish of Orleans, that he, the said —— ——, on or about the — day of ——, 187–, did willfully, unlawfully, and fraudulently, obtain registration as an elector of said parish of Orleans, in the — ward thereof, contrary to section 21 of act No. 155 of the session of 1874, of the General Assembly of the State of Louisiana, and more particularly in contravention of section 5512 of the Revised Statutes of the United States of America.

And what you do in the premises make due return to me.

Witness my hand and seal of office in the city of New Orleans, State of Louisiana, this — day of ——, 1876.

[L. S.] JOHN P. SOUTHWORTH,
United States Commissioner of the Circuit Court for the District of Louisiana.

4 EXHIBIT C.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
WASHINGTON, D. C., *November* 17, 1877.

Messrs. Carpenter, Coleman & Bell, Washington, D. C.

GENTLEMEN: Your letter of the 27th ultimo to the Secretary of the Treasury was referred to this office on the 6th instant, and has been considered. The account to which it relates, being an account of J. P. Southworth, United States commissioner for Louisiana, for services from October 26 to November 6, 1876, has also been referred to this office. For reasons given in the certificates of the auditor and comptroller upon said account, it cannot be allowed. Copies of the certificates are herewith.

Very respectfully, R. W. TAYLOR, *Comptroller.*

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *November* 12, 1877.

The account of J. P. Southworth, United States commissioner for the district of Louisiana, having been presented to this office for

its action, and not having been approved by the court under act of February, 1875, cannot be allowed by this office, and the same is hereby certified to the Comptroller of the Treasury for his action thereon.

(Signed) D. W. MAHON, *Auditor.*

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
WASHINGTON, D. C., *November* 16, 1877.

The account referred to in the foregoing certificate of the first auditor is for official services stated to have been performed by the commissioner from the 26th day of October to the 6th day of November, 1876. During said period of twelve days there were issued from the commissioner's office eight thousand two hundred and twenty-three warrants of arrest. Thirteen hundred and eighty of said warrants were served upon accused persons, of whom about seventy were bound over, and three or four committed to await the action of the grand jury.

Pursuant to the act of February 22, 1875, said account was submitted for approval to the United States circuit court for the district of Louisiana, and the court disapproved all charges of fees in cases where the defendants were neither committed nor held to bail. Said charges were disapproved as "not being according to law and just."

From the published opinion of the presiding judge, I learn that the reasons assigned for the disapproval were as follows: 1. That a warrant of arrest must not issue without a full, candid investigation, and that the informations upon which the warrants were issued by Commissioner Southworth could not have been examined with any proper scrutiny in so short a time. 2. That most of the warrants were issued without the written signature of the commissioner; that a stamp was used in lieu thereof, and the judge inclined to the opinion that all warrants so issued were void.

The first section of the act of February 22, 1875, declares that before any account payable out of the money of the United States shall be allowed by any officer of the Treasury in favor of clerks, marshals, or district attorneys, the party claiming such accounts shall render the same to a circuit or district court, and prove to the satisfaction of the court that the services therein charged have been actually and necessarily performed. Accounts of United States commissioner- must also be submitted to a court for approval, and the court must pass upon them in the same manner as upon the accounts of the officers above named.

The account of Commissioner Southworth has not been proved to the satisfaction of the court, and it cannot be allowed by any officer of the Treasury.

The auditor having failed to act on the account, I take no further action.

R. W. TAYLOR, *Comptroller.*

5 II.—*Order of Court Reviving Suit in the Name of the Executrix. Feb'y* 20, 1882.

At a Court of Claims held in the city of Washington, February 20, 1882.

Mr. Mayer filed letters testamentary to Caroline Southworth, and it was ordered that the suit be revived in her name.

III.—*Demurrer. Filed January* 25, 1884.

Now comes the Attorney General on behalf of the defendants and demurs to the petition herein filed, and says that the said petition does not set out a good cause of action against the defendants.

First. Because the services set up in the petition as having been rendered, and for which claim is now made, were not the "services in each case" which are contemplated by section 1985 of the Revised Statutes.

Second. Because the approval by the United States circuit court of such a claim for services is, by virtue of section 846, Revised Statutes, and the act of February 22, 1875 (Supplement to Revised Statutes, p. 145), essential to any allowance or payment thereof; and the said claim not having been so approved does not constitute a legal claim against the United States.

THOMAS SIMONS,
Assistant Attorney General.

IV.—*Argument and Submission on Demurrer. February* 25, 1884.

At a Court of Claims held in the city of Washington on the 25th day of February, A. D. 1884.

The demurrer in this case was argued by Mr. Douglass, for the defendants, for the demurrer, and by Mr. Mayer, opposed, and submitted.

V.—*Demurrer Sustained, with Leave to Claimant to Amend Petition. March* 3, 1884.

At a Court of Claims held in the city of Washington on the 3d day of March, A. D. 1884.

The chief justice read the opinion of the court, and it was ordered that the demurrer of the defendants, heretofore filed, be sustained, and that the claimant have thirty days in which to amend his petition, at the end of which time, if it be not amended, it shall be dismissed.

BY THE COURT.

6 VI.—*Amendment to Petition. Filed April* 3, 1884.

Claimant amends his petition herein by adding thereto the following:

In accordance with the provisions of the laws of Louisiana,

namely, of act No. 150 of the session laws of the General Assembly of Louisiana for the year 1874, a registration of voters was duly held in the State of Louisiana for an election to be held under the laws of said State, on, to wit, the — day of ——, 1876, at which said election, under the laws of said State and of the United States, representatives in the Congress of the United States were to be voted for. That under the said laws of said State each person who presented himself to the duly authorized registering officer for registration was required to make affidavit as to the place of his residence, and, if in a city or town, to designate under oath the house in which he resided by the name of the street on which it was situated and its number on said street, and each of the persons against whom the said complaints were made, as aforesaid, had presented himself for registration, as aforesaid, and had made said affidavit that he resided in a house on a certain street and of a certain number in the city of New Orleans, and nowhere else; that a record of the persons so registered, with the places of their respective residences, as aforesaid, was by said laws required to be kept and was kept by said registering officers, the said records being public, and that the persons who made the complaints on which said warrants were issued knew of said records and of the statements they contained in relation to the places of residence of the persons, respectively, who are charged by them in said complaints with having falsely registered by giving as their place of domicile and residence places at which they did not in fact reside; that each of the said persons who made oath to the said complaint did so after inquiry and investigation had been made by them at and about the said alleged places of residence of the said persons whom they charge, in said complaints, with having falsely registered by respectively making false statements, as aforesaid, as to their places of residence, and learning, by said investigations and inquiries, that the said persons did not at the time of said investigation and inquiry, as aforesaid, reside where they had stated in their said registration affidavits, made a short time, to wit, twenty days, previous to said investigation, that they did reside; that the said election for which said registration was held had not occurred at the time of the making of said complaints and the issuance of the warrants thereon, and the residences of the said persons as given by them at the times of registration, as aforesaid, had not been changed on their application or otherwise on the said registration records, thus giving the said Southworth, as such commissioner, probable cause to believe that each of the said
7 persons charged in said complaints had falsely, fraudulently, and unlawfully caused himself to be registered as a lawful voter.

ABRAHAM & MAYER,
Claimant's Attorneys.

COUNTY OF ——, }
State of Connecticut. }

Caroline Southworth, on being duly sworn, deposes and says that she is the executrix of the estate of John P. Southworth, deceased, and the claimant in the above-entitled cause; that the facts alleged in the foregoing amendment to the original petition of claimant in said cause, the said amendment having been filed in said court on April 3, 1884, are true to the best of her knowledge and belief.

MRS. CAROLINE SOUTHWORTH.

Sworn to and subscribed before me this 5th day of April, 1884.

DAVID B. BOODY,
Judge of Probate.

VII.—*Demurrer to Amended Petition. Filed March* 9, 1889.

And now come the said defendants, by their Attorney General, and, demurring to the amended petition in this cause, state as the ground thereof that the said amended petition does not allege facts sufficient to constitute a cause of action.

ROBERT A. HOWARD,
Ass't Att'y General.

VIII.—*Submission on Demurrer. Oct.* 28, 1889.

At a Court of Claims held in the city of Washington on the 28th day of October, 1889.

The demurrer herein was submitted by Mr. Assistant Attorney General Cotton, for the demurrer, and by Mr. King opposed.

IX.—*Demurrer Sustained and Petition Dismissed. November* 4, 1889.

CAROLINE SOUTHWORTH, Executrix of John P. Southworth, Dec'd,
vs.
THE UNITED STATES. } No. 11977.

At a Court of Claims held in the city of Washington on the 4th day of November, A. D. 1889.

In this case it was ordered that the demurrer of the defendants be sustained and the petition of the claimant, Caroline Southworth, executrix of John P. Southworth, deceased, be dismissed for reasons stated by the court in its opinion upon the demurrer to the original petition.

BY THE COURT.

8 X.—*Application of Claimant for and Allowance of Appeal.*

CAROLINE SOUTHWORTH, Executrix of the Last Will and Testament of John P. Southworth, Dec'd,
vs.
THE UNITED STATES.
} No. 11977.

From the judgment rendered in the above-entitled cause on the 4th day of November, 1889, dismissing the claimant's petition the claimant, Caroline Southworth, executrix of the last will and testament of John P. Southworth, deceased, by her attorney of record, Lewis Abraham, makes application for and gives notice of an appeal to the Supreme Court of the United States.

LEWIS ABRAHAM,
Att'y of Record.
GEORGE A. KING, *Of Counsel.*

Filed and allowed in open court.
November 11, 1889.

WILLIAM A. RICHARDSON,
Chief Justice.

The foregoing record on appeal, together with the opinion of the court sustaining the demurrer, was certified to the Supreme Court of the United States May 20, 1890.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

9 XI.—*Mandate of the Supreme Court of the United States Reversing Judgment of Court of Claims. Filed June* 11, 1894.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the Court of Claims, Greeting:

Whereas lately in the Court of Claims, before you or some of you, in a cause between Caroline Southworth, executrix of John P. Southworth, deceased, claimant, and The United States, defendant, No. 11977, wherein the judgment of the said Court of Claims, entered in said cause on the 4th day of November, A. D. 1889, is in the following words, viz:

"In this case it was ordered that the demurrer of the defendants be sustained and the petition of the claimant, Caroline Southworth, executrix of John P. Southworth, deceased, be dismissed for reasons stated by the court in its opinion upon the demurrer to the original petition.

BY THE COURT."

As by the inspection of the transcript of the record of the said Court of Claims, which was brought into the Supreme Court of the

United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety-three, the said cause came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Court of Claims in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Court of Claims, with direction to overrule the demurrer and for further proceedings in conformity to law.

January 8, 1894.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of June, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

10 XII.—*Defendants' Demurrer Overruled.*

At a Court of Claims held in the city of Washington on the 18th day of June, 1894, it was ordered—

That the demurrer of the defendants herein be overruled.

BY THE COURT.

XIII.—*Argument and Submission of Case on Mandate of Supreme Court.*

At a Court of Claims held on the 16th, 17th, and 18th days of April, 1895, this case was argued and submitted on the mandate of the Supreme Court.

11 XIV.—*Findings of Fact and Conclusion of Law Filed by the Court May 6, 1895.*

Findings of fact.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

The claimant's testator was a circuit court commissioner for the district of Louisiana, from the 26th day of October, 1876, to the 6th day of November, 1876, issued warrants against 8,283 persons for a violation of section 5512 upon the following complaint:

UNITED STATES OF AMERICA,
District of Louisiana, Parish of Orleans.

—— ——, having been duly sworn, each for himself, on oath says that he is a citizen of the State of Louisiana, residing in and a qualified elector of said parish of Orleans, duly registered, and that his name appears as a registered elector or voter upon the registration books of said parish for the year 1876; and they further say, each for himself, that they have made due and diligent personal inquiry for ——, registered upon the registration book of the —— ward, of the city of New Orleans, No. —, and claiming to reside at No. —, —— street, in said ward and city; and that said —— does not reside in said —— ward or parish of Orleans aforesaid; that therefore said ——, on or about the — day of ——, 187–, did fraudulently obtain registration as aforesaid in said —— ward and parish as stated, as an elector in said ward and parish, contrary to the 21st section of act No. 155 of the session of 1874; of the General Assembly of the State of Louisiana, and contrary to and in contravention of section 5512 of the Revised Statutes of the United States.

—— ——.
—— ——.

Sworn to and subscribed on the — day of ——, 1876.

[L. S.] JNO. P. SOUTHWORTH,
United States Commissioner of the Circuit Court in and for the District of Louisiana.

The prosecutions were the result of a purpose on the part of party managers to purge, as they alleged, the register of illegal voters, which register was to be used at the ensuing election of November 7, 1876, said register being based on former registration. In issuing the warrants said commissioner employed a large number of clerks, using most of the time in the signature to the warrants a stamp which was a fac-simile of his signature. It does not appear that he made any inquiry or examination of witnesses to satisfy himself of probable cause, but issued warrants on the affidavits. The clerks used the stamp in affixing the name of the commissioner to the warrants until it became broken, and then signed the name of the commissioner.

Of the number against whom warrants were issued 6,903 were "not found," and 1,380 were arrested; of that number 77 were held for trial and 1,303 were discharged. The 8,283 persons for
12 whom warrants were issued included about 2,000 persons of respectability and character who were residents of the city of New Orleans, and upon this fact coming to the knowledge of the commissioner he summarily discharged them and dismissed the prosecutions. In the issuance of the warrants the commissioner exercised no discretion and made no personal examination of the complaints or witnesses but issued in all cases in which a complaint was made as above set forth.

The warrants were issued generally for the purpose of affecting

the register of votes to be used in the election and not to arrest and punish offenders.

II.

The hearing of the cases of the 1,380 persons who were arrested took place between the 26th day of October, 1876, and the 6th day of November following. For hearing and deciding the 77 cases in which defendants were held for trial, the claimant's testator has been paid. In a large majority of the 1,303 cases in which the defendants were discharged, it does not appear that the claimant's testator performed any service in investigating the offenses charged nor in judicially determining the guilt or innocence of the parties. The number of cases of the 1,303 in which he did render such service has not been shown.

III.

Before issuing said warrants the commissioner had a consultation with the assistant district attorney of the United States (the district attorney being absent), and upon the return of the latter he consulted with him also. They both advised the commissioner that where the affidavits showed upon their face an offense against the United States, it was his duty to issue a warrant. The persons who made the affidavits were 120, each affidavit being sworn to by two persons, there being 60 groups of two persons. A circular letter was addressed to the persons whose names were upon the registration books, and if the circulars were returned to the post office undelivered, personal inquiry was made by the affiants as to the whereabouts of the person addressed around the place where the circular was addressed, and if the person could not be found the person making the inquiry would swear to the affidavit or complaint.

IV.

The affidavits upon which warrants were issued in the cases mentioned in finding I were against persons who had registered for the purpose of voting at elections prior to that of 1876, and who in the meantime had removed from the ward or voting precinct in which they had been registered severally, but the supervisors of registration had omitted to cause the names of such persons to be erased from the registration lists being prepared for the election of 1876.

V.

The accounts for said services were submitted to the circuit court of the United States for the district of Louisiana, and said accounts were approved only as to the said 77 cases, at $10 a case, which was paid by the defendants as aforesaid.

VI.

From said facts the court finds the ultimate fact to be that the claimant's testator did not perform the services for the United States in good faith for the purpose of enforcing the criminal law.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover, and the petition is dismissed.

13 XV.—*Final Judgment of the Court.*

CAROLINE SOUTHWORTH, Executrix of the Last Will and Testament of John P. Southworth, Deceased,
v.
THE UNITED STATES. } 11977.

At a Court of Claims held in the city of Washington on the 6th day of May, A. D. 1895, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for defendants and do order, adjudge, and decree that the petition of the claimant, Caroline Southworth, executrix of John P. Southworth, deceased, be dismissed.

BY THE COURT.

14 XVI.—*Appeal to the Supreme Court of the United States and Allowance of Same.*

CAROLINE SOUTHWORTH, Executrix of the Last Will and Testament of John P. Southworth, Deceased,
v.
THE UNITED STATES. } No. 11977.

From the judgment rendered in the above-entitled cause on the 6th day of May, 1895, dismissing the claimant's petition, the claimant, Caroline Southworth, executrix of the last will and testament of John P. Southworth, deceased, by her attorney of record, Lewis Abraham, makes application for and gives notice of an appeal to the Supreme Court of the United States.

LEWIS ABRAHAM,
Attorney of Record.
GEORGE A. KING,
Of Counsel.

Filed and allowed in open court June 13, 1895.

WILLIAM A. RICHARDSON,
Chief Justice.

15 In the Court of Claims.

CAROLINE SOUTHWORTH, Executrix of John P. Southworth, Dec'd, }
v.
THE UNITED STATES. }

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing is a transcript of the record on appeal in the above-entitled cause as certified to the Supreme Court of the United States on the 20th day of May, 1890, and of the mandate of said Supreme Court filed June 11, 1894, and of the proceedings in the Court of Claims in pursuance of said mandate, of the findings of fact and conclusion of law and final judgment of said Court of Claims dismissing claimant's petition, and of the application of claimant for and allowance of appeal to said Supreme Court.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington city, this 2d day of July, 1895.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 15,942. Court of Claims. Term No., 652. Caroline Southworth, executrix of John P. Southworth, deceased, appellant, *vs.* The United States. Filed July 2nd, 1895.

161 U.S. 639

Office Supreme Court, U. S.
FILED
DEC 16 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

CAROLINE SOUTHWORTH, Executrix of JOHN P. SOUTHWORTH, dec'd., *Appellant*,
v.
THE UNITED STATES.
No. 652.

Motion to Advance.

Now comes the appellant in this cause, by her counsel, and moves the court to advance this cause, and in support of this motion suggests the following ground:

This cause has already once been before this court upon its merits upon an appeal from the judgment of the Court of Claims dismissing her petition on demurrer, and is reported in the 151st volume of reports of this court, page 179. The case now comes again before this court by appeal from a judgment of the Court of Claims dismissing the petition upon the finding of facts made by that court.

The case is therefore entitled to be advanced under rule 26, section 4, as one "once adjudicated by this court upon its merits."

LEWIS ABRAHAM,
GEORGE A. KING,
Attorneys for Appellant.

Office Supreme Court U. S.
FILED.
FEB 24 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 652.

CAROLINE SOUTHWORTH, Executrix of JOHN P. SOUTHWORTH, Deceased, Appellant,

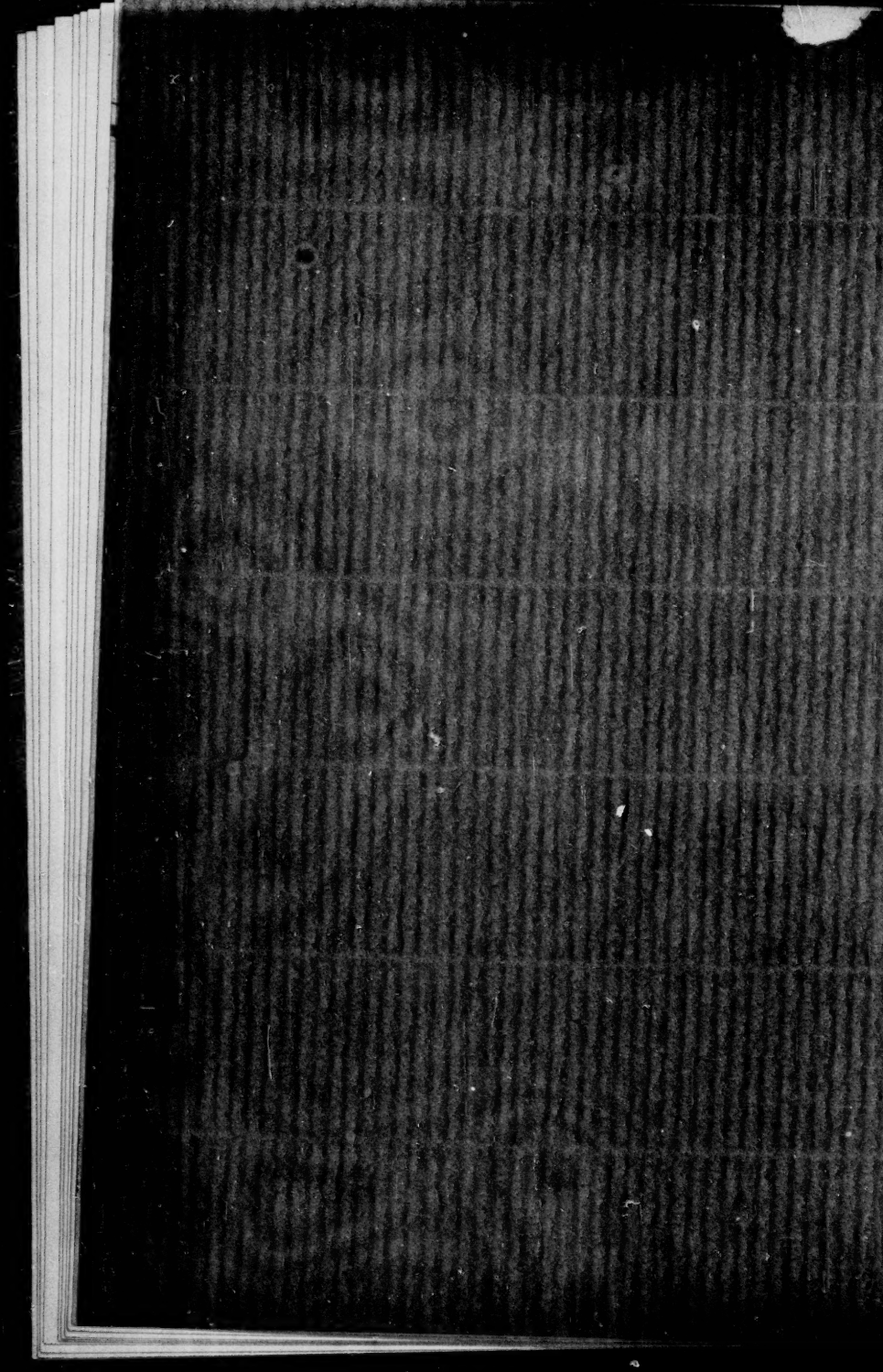
v.

THE UNITED STATES.

BRIEF FOR APPELLANT.

LEWIS ABRAHAM,
GEORGE A. KING,
Attorneys for Appellant.

H. L. McQUEEN, PRINTER.



IN THE

Supreme Court of the United States.

October Term, 1895.

CAROLINE SOUTHWORTH, Executrix of John P. Southworth, Deceased, *Appellant*, v. THE UNITED STATES. } No. 652.

BRIEF FOR APPELLANT.

I. Statement of the Case.

The history of this case to the date of the decision of this court thereon,—which was rendered on the 8th day of January, 1894,—appears in the opinion of this court delivered on that date by Mr. Justice Brewer, and reported in 151 U. S. 179, a pamphlet copy whereof is affixed as an appendix to this brief.

Upon the cause being remanded to the Court of Claims, that court entered findings of fact (Record, pp. 10–12), and as a conclusion of law from the facts set forth held (p. 13) "That the claimant is not entitled to recover." Judgment was therefore rendered (p. 13) dismissing the petition.

From that judgment this appeal (p. 13) is taken.

II. Assignment of Error.

The appellant hereby assigns the following error in the judgment of the Court of Claims.

That the conclusion of law from the facts was that th

claimant is not entitled to recover, and judgment was rendered accordingly dismissing her petition; whereas the conclusion of law upon the facts found should have been that the services of the commissioner, the claimant's intestate, were rendered in good faith, and that he was entitled to payment therefor, and judgment should have been rendered in her favor for the amount claimed in the petition.

III. Brief of Argument.

The absence of an opinion from the record renders somewhat doubtful the ground upon which the Court of Claims proceeded in arriving at its conclusion of law "that the claimant is not entitled to recover," in view of the decision of this court on the previous appeal that the facts set out in the petition disclosed a good cause of action, and of the findings of the court that the warrants were issued and the other services performed as alleged. Probably the conclusion of the court may be regarded as resulting from Finding VI (p. 12) "that the claimant's testator did not perform the services for the United States in good faith for the purpose of enforcing the criminal law." This, however, is only found by the court as "the ultimate fact" resulting "from said facts," that is the facts found in the first five findings.

This "ultimate fact" is, therefore, one of those inferences from "circumstantial facts," as they are called in *United States* v. *Pugh*, 99 U. S. 265, as to which it is there said (p. 270), "They are the results of evidence, and whether they establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law." It was therefore held (p. 271) that "the ultimate effect of the facts which the direct evidence has established is left open for review here on appeal."

Which of the "circumstantial facts" so found justifies the ultimate finding of the court that the "services were not performed in good faith"?

Certainly not the issuance of the warrants merely on affidavits, without further inquiry, or examination of witnesses. The affidavits on their face showed probable cause, as was expressly decided by this court on the former appeal. Hence it was the right and duty of the commissioner to issue warrants thereon, especially as this was done after consultation both with the assistant district attorney and the district attorney (Finding III, p. 12), both of whom advised him that such was his duty where the affidavits disclosed an offense upon their face.

Again, too, it can not be claimed that either the use of a stamp containing a *fac simile* of the commissioner's signature, or, when this was broken, a signature by the clerks of the commissioner (Finding I, p. 11), in any degree invalidated the procedure.

This objection seems to have been made when the claim was before the Circuit Court and the Treasury Department, as shown by Exhibit "C" to the petition (Record, p. 5), which was before the court on the former hearing. That objection must therefore be regarded as disposed of by the former decision of the court. Independently of this, however, it rests upon no valid ground. This court has already decided that the omission of a seal from a warrant issued by a commissioner does not invalidate it. *Starr* v. *United States*, 153 U. S. 614.

In this case the lack of a seal is not alleged; but any claim of informality in the warrants must be based solely on the lack of the autograph signature of the commissioner. All the authorities, however, go to show that a signature to any instrument is valid either in autograph, or when written by another at the express direction of the person whose name is signed, or by an engraved

stamp, when affixed by his authority, or even in print when duly adopted by him.

"It has been held in England, that where a person in the presence of and at the request of the testator, stamped the will with an instrument on which the testator's usual signature was engraved, for the purpose of stamping it on letters and other documents requiring the signature of the testator, intending such act to take the place of the signing by the testator, the will was well executed. 3 Sw. and Tr. 93." 1 *Jarman on Wills*, 203, note (Fifth American Edition).

"In general where a signature is required the party's name printed upon the instrument with his sanction will suffice." *Mezohen* v. *Moore*, 54 Wis. 214; *Barnard* v. *Heydrick*, 49 Barth (N. Y.) 62.

"Thirdly the deed must be written, or, I presume, printed," etc. Then follows the note:

"There seems no doubt it may be printed, and that if signatures be requisite, the name of a party in print at the foot of the instrument would suffice. (2 Bos. and P. 238; 2 M. and S. 288) (Chitty)." Wendell's Blackstone's Com. Vol. 2, p. 296.

"In Virginia signature of attorney for commonwealth is not essential to the validity of an indictment." *Brown* v. *Commonwealth*, 86 Va. 466.

"An indorsement on an indictment 'a true bill' signed with the foreman's name written in his presence, and by his direction, by the clerk of the grand jury, is the foreman's signature and does not invalidate the indictment." *Benson* v. *State*, 68 Ala. 544.

Section 1669 R. S. of Indiana (1881) provides that after an indictment has been found by a grand jury "it must be signed by the prosecuting attorney," and where an indictment is returned without his signature Sec. 1670 makes it the duty of the prosecuting attorney to sign it. Another section declares that "The words 'written,' and 'in writing' shall include printing, lithographing or other

modes of words and letters. But in all cases where the written signature of any person is required the proper handwriting of such person, or his mark, shall be intended."

"An indictment is sufficiently 'signed' by the prosecuting attorney when his name with his official title is printed at the bottom with his sanction." *Hamilton* v. *State*, 103 Ind. 96—53.

"Signature to summons in civil actions need not be in handwriting of the plaintiff or his attorney. Any signature, whether printed or lithographed, which the party issuing the summons may adopt as his own will be sufficient." *Herrick* v. *Morrill*, 5 American State Reports, 841 (Minnesota).

At most the failure to personally affix the commissioner's signature was a mere irregularity which could only be relied upon by the parties against whom the warrants were issued. They not having done so, but having, as it seems, appeared and made defense on the merits to the charges against them, it is too late afterwards for the government to raise that question in a purely collateral proceeding like the present.

"It is a general rule that irregularities in the course of judicial proceedings do not render them void. An irregularity may be defined as the failure to observe that particular course of proceeding which, conformably with the practice of the court, ought to have been observed in the court; and if a party claims to be aggrieved by this, he must apply to the court in which the suit is pending to set aside the proceedings, or to give him such other redress as he thinks himself entitled to; or he must take steps to have the judgment reversed by removing the case for review to an appellate court, if any such there be. Whatever the question of the validity of the proceedings arises in any collateral suit, he will be held bound by them to the same extent as if in all respects the court had proceeded according to law. An irregularity can not be taken advantage of collaterally; that is to

say, in any other suit than that in which the irregularity occurs, or an appeal or process in error therefrom. And even in the same proceeding an irregularity may be waived and will be commonly held to be waived if the party entitled to complain of it shall take any subsequent step in the case inconsistent with an intent on his part to take advantage of it." *Cooley's Constitutional Limitations*, page 503.

"If the defendant has consented to any step in the proceedings, or if it has been taken at his own request, or if he did not object to it at the proper time when he might, he can not afterward complain of it, however contrary it was to his constitutional, statutory or common law rights." 1 *Bishop's Crim. Procedure*, 119.

"Where a defendant is arrested and brought into court, and, at his own suggestion enters into a recognizance for his appearance at a subsequent time, he waives all defects and irregularities of the warrant and arrest." *Junction City* v. *Keefe*, 40 Kan. 275; *Ard* v. *State*, 114 Ind. 542.

What then is the effect of the following facts contained in Finding II (p. 12)? "In a large majority of the 1,303 cases in which the defendants were discharged, it does not appear that the claimant's testator performed any service in investigating the offenses charged nor in judicially determining the guilt or innocence of the parties. The number of cases of the 1,303 in which he did render such service has not been shown"? This finding, however, is materially qualified by several others contained in the record. One of these is the following statement, constituting a portion of Finding I (p. 11):

"The 8,283 persons for whom warrants were issued included about 2,000 persons of respectability and character who were residents of the city of New Orleans, and upon this fact coming to the knowledge of the commissioner he summarily discharged them and dismissed the prosecutions."

These dismissals, of course, were the result of a discretion exercised by the commissioner, and doubtless took place even before the return of the warrants, as they numbered about two thousand, while the whole number of persons alleged and found to have been arrested and brought before the commissioner was only 1,380.

Up to the time then of the arrest of these parties and their examination before the commissioner, we find abundant evidence of a careful exercise of judicial discretion. In the issuance of the warrants, for upon that question the decision already made by this court is that the affidavits showed probable cause, justifying the commissioner's action in issuing the warrants. In the dismissal of unfounded prosecutions, because in all cases in which the commissioner is shown to have ascertained that the parties were residents of the city of New Orleans of respectability and character, he summarily dismissed the charges, even before an arrest was effected.

Coming now to the character of the hearings which took place in the 1,380 cases in which the parties were arrested, it is quite manifest that the finding of the court below that "it does not appear that the claimant's testator performed any services in investigating the offenses charged, nor in judicially determining the guilt or innocence of the parties" constitutes a mere inference of law from the surrounding circumstances of the whole case.

What constitutes judicial action on the part of a commissioner is a question of considerable difficulty and complication, on which there have been several decisions.

In *United States* v. *Jones*, 134 U. S. 483, the determination of the question whether an accused person shall be admitted to bail, or even upon the sole question of the sufficiency of the sureties offered by him, constitutes a judicial hearing and decision. It is also held that

motions for continuance fall under the same category of judicial action in hearing and deciding.

In *United States* v. *Patterson*, 150 U. S. 65, this view was somewhat qualified, and it was held that a *per diem* fee was not allowable as for a "hearing and deciding," for the mere consideration of the propriety of issuing a warrant upon an affidavit, though even that service was conceded to be of a judicial nature.

Tested by these views, it must be apparent that when the commissioner held that out of the 1,380 persons arrested and brought before him sufficient cause was shown against 77 to require them to be held for the action of the grand jury, while the other 1,303,—there being no evidence offered against them,—were entitled to be discharged, he exercised in that regard a judicial discretion. This, if honestly exercised, entitled him to the compensation prescribed by law. There is not a single fact in the case which even tends to show that it was not honestly exercised. True, it is said that "it does not appear that he performed any service in investigating the offenses charged, nor in judicially determining the guilt or innocence of the parties." It must be remembered, however, that a commissioner in these cases, like any other court or tribunal sitting under authority of law, acts only upon evidence offered by the parties.

The duty of offering testimony in support of the charges for prosecution before a commissioner devolves upon the district attorney, "It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States" (R. S. sec. 771). And that this provision extends to examinations before commissioners is made plain by that clause of section 824 which allows "For examination by a district attorney, before a judge or commissioner, of persons charged with

crime, five dollars a day for the time necessarily employed."

If, therefore, in any given case there is a simple failure of the district attorney to prosecute, or of witnesses to appear against parties, it is the duty of the commissioner, without further investigation, to dismiss the complaint. This is what he appears to have done in this case, and a performance of a plain duty in this regard can not justly be held to forfeit his right to the fee of $10 in each case granted by that portion of section 1986 of the Revised Statutes which provides that "where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination."

This section, it will be seen, does not absolutely require a judicial "hearing and deciding" as did the language of Sec. 847 under which the *per diem* fee was successfully claimed in *United States* v. *Jones*, 134 U. S. 483, and unsuccessfully in *United States* v. *Patterson*, 150 U. S. 65. It is merely that there be an "arrest and examination." This, too, was plainly the view of this court, as shown by the last two paragraphs of the opinion on the former hearing, from which we quote (151 U. S. 185, 186):

"That when the defendant is arrested and examination held there is a 'criminal case,' is clear. *Counselman* v. *Hitchcock*, 142 U. S. 547; *United States* v. *Patterson*, 150 U. S. 65. That, unless there be an arrest and examination, there is no 'case' within the meaning of section 1986 is equally clear. The amount allowed, $10, precludes the idea that the mere filing of a complaint and issue of a warrant is sufficient. And the language of the statute is plain. The allowance is 'for his services in each case, inclusive of all services incident to the arrest and examination.'

"It follows from these considerations that a cause of action was stated as to the 1,303 cases in which there was an arrest, examination, and discharge of the defendant."

That the parties were arrested is expressly found. That they were examined before the commissioner also appears in the findings, and nothing is cited to show that the examination was not conducted in entire good faith. The statutory fee of $10 was therefore earned.

We again submit, as we did in our brief upon the former appeal, that even if there was not a sufficient examination of the charges to entitle the commissioner to a fee of $10 under section 1986, he is still entitled to a fee of $1 in each case for the issuance of all the warrants. Even if it be held that the proceedings in the cases in which no arrests were ever made do not constitute a *case*, the commissioner would still be entitled to *some* payment for those services. For the issuance of each warrant he would by section 847 be entitled to a fee of $1. It is true the petition does not claim the fees under section 847, but only under section 1986. But under similar circumstances this court said in *Clark* v. *United States*, 95 U. S. 539, 543: "If objected that the petition contains no count upon an implied contract for *quantum meruit*, it may be answered, that the forms of pleading in the Court of Claims are not of so strict a character as to preclude the claimant from recovering what is justly due to him upon the facts stated in his petition, although due him in a different aspect from that in which his demand is conceived."

In the consideration of this case the peculiar circumstances under which the services were performed can not be lost sight of. A great national election was then impending, which was believed, as subsequent events plainly showed, to be one of the most closely contested and

evenly divided in the history of the country. That it was the duty of all officers of the United States to go to the utmost extreme of precautions for the preservation of the purity of the ballot and of the rightful exercise of the elective franchise is a proposition which will hardly be denied. In the exercise of this important duty there is not the slightest allegation, or even intimation, that the commissioner acted in the interest of any particular candidate or political party. True, it is found (p. 11) that "The prosecutions were the result of a purpose on the part of party managers to purge, as they allege, the register of illegal voters"; and again (pp. 11, 12) that "The warrants were issued generally for the purpose of affecting the register of votes to be used in the election and not to arrest and punish offenders."

This, however, is to be construed as a part of the purpose of the party managers, not of the commissioner. Nor is the propriety of his action in the slightest degree impeached by the fact that he acted upon complaints made to him by party managers. It is not only the legitimate duty but perhaps the most useful public function of party organizations to detect and expose fraudulent practices when attempted by their opponents. Nowhere could this duty be more rightfully performed than in a locality where the contest was so close, and charges of fraud on either side so vehemently made, as on this occasion in Louisiana.

Since this case was argued and decided on the former appeal, Congress has decided that no further public necessity now exists for such supervision of Federal elections as that under which the commissioner acted in this case. By the act of February 8, 1894, 2 Supp. R. S. U. S. 171, all provisions for Federal supervision of elections were repealed. Care was taken, however, to continue in force all appropriations for fees of supervisors of elections, 28

Stat. L. 414, 415, thus indicating the will of Congress that the right to compensation for all services rendered under these laws prior to their repeal should in no manner be impaired. The decision of this case is, therefore, in no way important as a precedent for future cases. It concerns this claim alone.

In conclusion it is submitted that as the petition in this case was held upon a former appeal to disclose a good and valid cause of action, and as all of its averments have been in substance established, as shown by the findings of fact, the judgment of the Court of Claims dismissing the petition was erroneous and should be reversed, with directions to enter a judgment for the fee of $10 in each of the 1,303 cases in which there was an arrest, examination and discharge; or, if that be not regarded as allowable, then a fee of $1 for the issuance of each warrant, being the fee allowable by section 847 to a commissioner "for issuing any warrant or writ."

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COURT OF CLAIMS.

No. 11977.

CAROLINE SOUTHWORTH, EXECUTRIX OF JOHN P. SOUTHWORTH, DECEASED, v. THE UNITED STATES.

OPINION OF THE SUPREME COURT OF THE UNITED STATES.

[January 8, 1894.]

This is an appeal from a judgment of the Court of Claims. The action was commenced by John P. Southworth on December 16, 1882, to recover the sum of $82,830 for services as a circuit court commissioner for the district of Louisiana. The petition alleged that during the year 1876 8,283 complaints were made to him as such commissioner, charging certain persons named therein with the violation of section 5512, Revised Statutes; that on such complaints the petitioner, as commissioner, duly issued warrants against the persons named, and delivered them to the marshal of the district; that of the persons named in these complaints and warrants 6,903 were not found, and 1,380 were arrested; that of those arrested 77 were held for trial, while the remaining 1,303 were, on examination, discharged.

The complaints are stated to have been in this form:

UNITED STATES OF AMERICA.

DISTRICT OF LOUISIANA, *Parish of Orleans:*

—— ——, having been duly sworn, each for himself, on oath says that he is a citizen of the State of Louisiana, residing in and a qualified elector of said parish of Orleans, duly registered, and that his name appears as a registered elector or voter upon the registration books of said parish for the year 1876; and they further say, each for himself, that they have made due and diligent personal inquiry for ——, registered upon the registration book of the —— ward, of the city of New Orleans, No. —, and claiming to reside at No. —, —— street, in said ward and city; and that said —— does not reside in said —— ward or parish of Orleans aforesaid; that therefore said ——, on or about the — day of ——, 187—, did fraudulently obtain registration as aforesaid in said —— ward and parish as stated, as an elector in said ward and parish, contrary to the 21st section of act No. 155 of the session of 1874; of the general assembly of the State of Louisiana, and contrary to and in contravention of section 5512 of the Revised Statutes of the United States.

—— ——.
—— ——.

Sworn to and subscribed on the — day of ——, 1876.
[L. S.]

JNO. P. SOUTHWORTH,
United States Commissioner of the Circuit Court in and for the District of Louisiana.

The petition further alleged that the petitioner, as commissioner, made a docket entry of all the proceedings in each case, as required by law, including therein the title of the case with the name of the defendant, the

drawing of the affidavit or complaint and the date of the same, the issuing of the warrant and its date, the return of the officer, the arrest and examination of the person charged in each case where an arrest was made, the number of oaths administered and affidavits filed, and that he also kept full and correct files in each case of all the papers therein, including affidavits, warrants, etc.; that he presented his account, duly verified by his oath, to the district attorney of said district of Louisiana, who submitted the same in open court to the district court, and the court passed upon the same by approving the account as to the 77 cases in which the persons arrested were held for trial, the amount of which was, as afterwards admitted, paid by the Government. and disallowing and refusing to certify the same as to the other cases. It further alleged a presentation of his claim to the proper accounting officers of the United States for settlement, and their refusal to allow the same.

A demurrer to this petition having been sustained (19 C. Cls. R., 278), the plaintiff amended, by adding allegations to the effect that act No. 50 of the session laws of the general assembly of Louisiana, for the year 1874, required a registration of voters for the election in 1876, and showing in a general way the facts and circumstances which justified the commissioner, as claimed, in finding that there was probable cause to believe that offenses had been committed, and in issuing the warrants.

A demurrer to this amended petition was thereafter filed and sustained and judgment rendered dismissing the petition.

Pending the proceedings in the Court of Claims the petitioner died, and the suit was revived in the name of the present plaintiff, his executrix.

Section 5512, Revised Statutes, is in chapter 7 of the title "Crimes." By section 1982 the commissioners, with other officers, are "authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter 7 of the title 'Crimes,'" and by section 1986 the commissioner is "entitled to a fee of $10 for his services in each case, inclusive of all services incident to the arrest and examination."

Mr. Justice Brewer delivered the opinion of the court.

The magnitude of this claim is startling. If the fact be, as stated in the report of the Comptroller, attached as an exhibit to the petition, that these complaints were filed and warrants issued during the twelve days from October 26 to November 6, or at the rate of about seven hundred a day, as only one out of six of the persons named was ever found and arrested, it is calculated to arouse a suspicion that these proceedings were not had in the due and orderly administration of criminal law, and with a view to the arrest and punishment of offenders, but rather for the sake of rolling up a pecuniary claim against the Government, or from some other equally dishonest motive. But it does not follow that the demurrer was properly sustained or that the claim can rightfully be denied by reason of the mere suspicion of wrong. If there had been but a single case before the commissioner and the proceedings in that, as stated, be sufficient to establish a valid claim against the United States, then the demurrer ought to have been overruled, for the mere multiplication of the cases, even into the thousands, does not, as a matter of law, disclose any illegality. The facts attending the prosecutions should be fully presented in order that the bona fides of the transaction may be determined. We pass,

therefore, to consider the petition as though it alleged but one case before the commissioner, one complaint filed, one warrant issued, and one party arrested.

That the refusal of the court to approve the account is no bar to the action is settled by *United States* v. *Knox* (128 U. S., 230), although such refusal may be a matter for consideration in respect at least to the good faith of the transaction. (*United States* v. *Jones*, 134 U. S., 483.)

It is insisted by the Government that the complaint does not state an offense; that in consequence there was no foundation for the issue of the warrant, or for the subsequent proceedings, and hence that there was in law no case before the petitioner as commissioner. We quote from the brief this statement of the alleged defects:

> It is not alleged that the accused did register; nor that he had no lawful right to register: nor that the registration books upon which his name appeared were made for an election at which a Representative in Congress might be chosen; nor, indeed, for any election whatever.
>
> It is, of course, perfectly clear that the affiants do no not pretend to swear, as to facts, that accused fraudulently obtained registration contrary to law, but merely to express a conclusion from the fact of nonresidence at a certain place.

It may be conceded that the offense is not stated with the fullness and technical accuracy required in an indictment, but we do not think that the complaint can be treated as an absolute nullity. In the seventy-seven cases in which the parties were arrested and held for trial it would seem that its sufficiency was conceded, for the account therefor was allowed and paid. While no estoppel is created by the act of the Government in making such payment, yet it is significant as showing that no technical accuracy in a complaint is considered essential. Doubtless the defect in a complaint may be so great as to suggest a lack of good faith on the part of the commissioner, but it would be placing an undue burden on such officers to hold that their right to compensation rested on the fact that the offense was stated with such precision as to be beyond the reach of challenge. It is sufficient if the complaint is full enough to clearly inform the defendant of the offense with which he is charged. It was well said by the supreme court of Alabama in *Crosby* v. *Hawthorn* (25 Ala., 223):

> In preliminary proceedings of this nature, which are usually had before justices of the peace, technical accuracy can not be expected and is not required. It is sufficient if, giving to the language employed its ordinary signification, the court may gather from it that an offense against the criminal law has been committed or attempted. If such proceedings were to be subjected to the rigid rules of criticism and all the constituent elements of the offense sought to be investigated were required to be set forth in the affidavit or warrant with certainty, the administration of the criminal law would be greatly embarrassed, and offenders would often go unpunished, by reason of the hazard which the justice who issues, the party who procures, and the officer who executes the warrant for arresting them would incur. We must be content to gather the meaning of the party from the affidavit, and disregard the want of technical accuracy of description.

There can be no mistake as to what was intended to be charged in this complaint. It in effect alleges that the defendant was registered upon the registration books of a named ward, and registered as claiming to reside at a given number on a particular street in that ward; that he did not reside in such place, or in the ward or parish of Orleans, and that, therefore, he was fraudulently registered in violation of a specified section of the statutes. Fraudulent registration is the crime charged, and charged with particularity of section, ward, residence claimed, and section of the statute violated. Whether a party arrested upon a warrant issued on

such complaint could be discharged on habeas corpus, it is unnecessary to determine. (*Ex parte Watkins*, 3 Pet., 193–203.) For it can not be that a commissioner guarantees to the Government the sufficiency of the complaint filed before him, and is entitled to no compensation if it be found defective. If he has proceeded in good faith to render services to the Government, acting upon a complaint manifestly intended to charge an offense, and, the defendant having been arrested upon such complaint, holding an examination, and rendering a judicial decision thereupon—in the language of the statute, "hearing and deciding on criminal charges," he is entitled to compensation. We conclude, therefore, that this affidavit is not so defective as to deprive the commissioner of a right to compensation for services rendered in good faith in the proceedings founded thereon.

It, of course, can not be tolerated, in the absence of express language, that compensation is to be paid when the defendant is bound over for trial, and not when he is discharged. That when the defendant is arrested and examination held there is a "criminal case," is clear. (*Counselman* v. *Hitchcock*, 142 U. S., 547; *United States* v. *Patterson*, 150 U. S., 65.) That, unless there be an arrest and examination, there is no "case" within the meaning of section 1986 is equally clear. The amount allowed, $10, precludes the idea that the mere filing of a complaint and issue of a warrant is sufficient. And the language of the statute is plain. The allowance is "for his services in each case, inclusive of all services incident to the arrest and examination."

It follows from these considerations that a cause of action was stated as to the 1,303 cases in which there was an arrest, examination, and discharge of the defendant, and that the Court of Claims erred in sustaining the demurrer to this petition. Judgment will, therefore, be reversed, and the case remanded, with instructions to overrule the demurrer, and for further proceedings in conformity to law.

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161 US 639

Office Supreme Court U. S.
FILED.
FEB 28 1896
JAMES H. McKENNEY,
CLERK.

161-639

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

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BRIEF FOR APPELLEE.

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In the Supreme Court of the United States.

OCTOBER TERM, 1895.

CAROLINE SOUTHWORTH, EXECUTRIX of John P. Southworth, deceased, appellant,
v.
THE UNITED STATES.
No. 652.

BRIEF FOR APPELLEE.

STATEMENT.

This case has once been before this court upon appeal by the claimant to reverse a judgment entered by the Court of Claims on demurrer, and is reported 151 U. S., 179. Its then presentation was upon the following state of facts:

The petition alleged that between the 26th day of October and the 6th day of November, 1876, claimant's testator, then a circuit court commissioner of New Orleans, La., issued 8,283 warrants based upon complaints of which a sample was attached; that upon these warrants 1,380 persons were arrested, 77 examined and held for trial, 1,303 discharged, and that as to 6,903

warrants the accused were not found. Upon this petition the Court of Claims held that a cause of action was not shown, chiefly for the reason that the complaints were too inadequate to justify a belief in the good faith of the commissioner issuing the same, in view, also, of the wholesale manner in which the business was obviously transacted. This court reversed that conclusion, holding that while the great number of such complaints, taken in connection with the very small number of warrants which were executed, were "calculated to arouse a suspicion that the proceedings were not had in the due and orderly administration of criminal law, and with a view to the arrest and punishment of offenders, but rather with a view to rolling up a pecuniary claim against the Government, or for some other equally dishonest motive" (p. 183), yet those facts alone were not sufficient to irrefutably establish such conclusion; that if they were *proved* to have been issued in good faith and for the legal purpose indicated the fact of the great number of them would not overcome the right to fees, nor would the imperfection of the complaints, which, as the court said at page 184, might be such as to suggest a lack of good faith on the part of the commissioner. The judgment of the Court of Claims, therefore, was reversed and the case remanded for trial upon the evidence as to the 1,303 cases in which arrests were made, the court holding that as to the 6,903 not executed no case had ever arisen to justify fees.

The case has now been tried, and the Court of Claims, after hearing extended evidence on the subject, having the dockets and all papers introduced in evidence before it, together with the circumstances surrounding the claim-

ant's decedent in the famous Louisiana campaign of 1876, have found:

> From said facts the court finds the ultimate fact to be that the claimant's testator did not perform the services for the United States in good faith and for the purpose of enforcing the criminal law. (Finding 6, p. 12, Rec.)

Several other detailed facts are also found, among others:

> The prosecutions were the result of a purpose on the part of party managers to purge, as they alleged, the register of illegal voters, which register was to be used at the ensuing election of November 7, 1886, said register being based on the former registration. In issuing the warrants the said commissioner employed a large number of clerks, using most of the time in the signature to the warrants a stamp which was the facsimile of his signature. It does not appear that he made any inquiry or examination of witnesses to satisfy himself of probable cause, but issued the warrants on the affidavits. The clerks used the stamp in affixing the name of the commissioner to the warrants until it became broken, and then signed the name of the commissioner. * * * In the issuance of the warrants the commissioner exercised no discretion and made no personal examination of the complainants as witnesses to the suit. In all cases only a complaint was made, as above set forth. The warrants were issued generally for the purpose of affecting the register of voters to be used in the election, and not to arrest and punish offenders. (Finding 1.)

ARGUMENT.

In the former decision of this case the court impliedly held that if "these proceedings were not had in the due

and orderly administration of criminal law and with a view to the arrest and punishment of offenders, but rather for the sake of rolling up a pecuniary claim against the Government or from some other equally dishonest motive" (p. 183), the claimant would not be entitled to his fees therefor; and again, that lack of good faith on the part of the commissioner would defeat his right to a recovery (p. 184).

The court remanded the case, saying that "the facts attending the prosecutions should be fully examined, in order that the *bona fides* of the transaction may be determined" (p. 183).

Any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice is a wrong motive. (Addison on Torts, 7th ed., p. 226.)

Section 984, Revised Statutes, requires that service of commissioner shall be necessary to support fees.

The Court of Claims, following the mandate, has carefully examined all the facts in order to determine whether they confirm or rebut the suspicions aroused by the wholesale manner of doing the business; and the suggestion of bad faith resulting from the form of the complaint, now shown to be purposely evasive to save harmless those who swore to them and who were not willing to swear to actual commission of the offense except as an inference from the fact that men who were registered at certain residences two years and four years previous were not, at time of the oath, resident at the same place.

After examining a multitude of facts, evidence of witnesses, original documents, dockets, etc., the court has found that "the claimant's testator did not perform the

service for the United States in good faith and for the purpose of enforcing the criminal law."

This is conclusive. (Rule 1, sec. 2, as to appeals from Court of Claims; *Burr* v. *Des Moines Co.*, 1 Wallace, 102; *De Groot* v. *United States*, 5 Wallace, 419–427; *Desmore* v. *United States*, 93 U. S., 605–610; *U. P. Ry.* v. *United States*, 116 *id.*, 154; *Talbert* v. *United States*, 155 *id.*, 45.)

Whether a purpose of party managers to "purge, as they alleged, the register of illegal voters" be a meritorious motive or not in the party managers, or in the supervisor of elections appointed for such purpose, it is a wrong motive in the commissioner, whose power is given only for the *bona fide* purpose of the arrest and punishment of offenders.

The "purpose of affecting the register of voters and not to arrest and punish offenders" may or may not be a virtuous one in the election officers according to the way they purpose to affect such register. But such purpose in a committing magistrate is not proper and does not constitute either the good faith or the necessity which the law requires in order to entitle him to fees for instituting wholesale prosecutions.

The purposes for which this case was remanded having been accomplished and the doubts arising on the petition when read by itself having all been resolved against the claimant, we submit the judgment should be affirmed.

J. E. Dodge,
Assistant Attorney-General.
Charles W. Russell,
Assistant Attorney.

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